Supreme Court, U. S.
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NUMBER 79-34

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

FORD E. STINSON,

Appellant

versus

LOUISIANA STATE BAR ASSOCIATION,

Appellee

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

STATE OF LOUISIANA

JURISDICTIONAL STATEMENT

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July 5, 1979

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STATE OF LOUISIANA

JURISDICTIONAL STATEMENT

The applicant, Ford E. Stinson, appeals from the judgment rendered on the 5th day of March, 1979, in the proceeding by the Supreme Court of Louisiana, pursuant to 28 U.S.C. § 1257(a). The appellee is the Louisiana State Bar Association.

OPINIONS BELOW

The opinions of the Supreme Court of Louisiana rendered on the 5th day of March, 1979, are reported in 368 So. 2d 971 and are included in Appendix A hereto, p. A-1, *infra.*

JURISDICTION

The opinions and judgment of the Supreme Court of Louisiana were entered on the 5th day of March, 1979. A motion for rehearing was entertained and denied on the 9th day of April, 1979. The denial is included in Appendix B hereto, p. B-1, *infra*.

A notice of appeal to this Court was duly filed with the Supreme Court of Louisiana on June 27, 1979; that notice of appeal is included in Appendix C hereto, p. C-1, *infra*.

QUESTION PRESENTED

Whether Louisiana's disciplinary proceedings are violative of the due process clause of the Fourteenth Amendment of the Constitution of the United States in that they fail to provide a term as to the suspension of a lawyer's right to practice law.

CONSTITUTIONAL PROVISION AND RULES

". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . ."

United States Constitution,
Amendment XIV, Section 1

"The Supreme Court has exclusive original jurisdiction of disciplinary proceedings against a member of the Bar."

Article 5, Section 5(B)
of the Louisiana Constitution

"All matters touching upon the discipline and disbarment of members of the bar shall be governed by Article XV of the Articles of Incorporation of the Louisiana State Bar Association, as amended, and as approved by this court."

Rule XIX. Discipline
and Disbarment. Rules
of the Supreme Court of
Louisiana.

The Articles of Incorporation of the Louisiana State Bar Association contain, in Article XV, the provisions concerning discipline and disbarment of members. This Article is reproduced in Appendix D hereto, p. D-1, *infra*.

RAISING THE FEDERAL QUESTION

Appellant raised the claim in an *Application for Leave to File a Supplementary Application for a Rehearing and Request for Additional Time to File a Brief in Behalf of Ford E. Stinson, in Connection with Same*, as filed with the Supreme Court of Louisiana. This application is reproduced in Appendix E hereto, p. E-1, *infra*. In denying the application for rehearing the Louisiana Supreme Court considered and expressly rejected the federal constitutional claim.

STATEMENT OF THE CASE

The appellant, Ford E. Stinson, was admitted to the practice of law in Louisiana in 1936. At all material times, he resided in the Town of Benton, Parish of Bossier, State of Louisiana, while maintaining his law office in Benton, Louisiana. On October 26, 1976, the appellee, the Louisiana State Bar Association, through its committee on financial responsibility, notified appellant that it was scheduling a formal investigatory hearing of alleged misconduct on appellant's part. Subsequent thereto, the Louisiana State Bar Association filed petitions for disciplinary action with the Louisiana Supreme Court.

Copies of these petitions, with attachments, are included in Appendix F hereto, p. F-1, *infra*. After briefing and argument, the Louisiana Supreme Court, by opinion rendered on the 5th day of March, 1979, [Appendix A, p. A-1, *infra*] suspended appellant from the practice of law for three years. The Chief Justice of the Louisiana Supreme Court dissented, being of the opinion that the suspension should be for only two years. This opinion is set forth in Appendix A, p. A-1, *infra*.

THE QUESTION IS SUBSTANTIAL

Lawyers are entitled to the Fourteenth Amendment protection as are other citizens. If they are to be punished for their behavior, they are entitled to know, in advance of actions which might result in punishment, the extent of punishment which may be invoked as a result of their taking such action.

Louisiana disciplinary provisions fail to establish a time certain during which an attorney may be suspended from the practice of law. Neither a minimum term nor a maximum term are provided for. It appears that this case is one of first impression. In construing punishment statutes, the courts have often held these statutes to be constitutional notwithstanding their failure to provide a maximum sentence so long as there was a specified minimum sentence. See *Binkley v. Hunter*, 170 F.2d 848 (10th Cir. 1948), *cert. den.*, 336 U.S. 926; *Earin v. Beto*, 453 F.2d 376 (5th Cir. 1972), *cert. den.*, 406 U.S. 909; *United States v. Rich*, 518 F.2d 980 (8th Cir. 1975), *cert. den.*, 427 U.S. 907. However, research has failed to disclose instances where the courts have held statutes constitutional where no minimum sentence was provided for. Apparently, the only totally discretionary punishment statute upheld by the courts has been the Lindberg kidnapping statute, which provided for "imprisonment in the penitentiary for such term of years as

the court, in its discretion, shall determine." In companion cases, *Bates v. Johnson*, 111 F.2d 966 (9th Cir. 1940), *cert. den.*, 311 U.S. 646; and *Bailey v. United States*, 74 F.2d 451 (10th Cir. 1954), this statute was under attack as providing for cruel and unusual punishment. In each instance, the courts held that life imprisonment for kidnapping was not cruel and unusual punishment for it was within the limits provided by the statute. Even though the statute had no limits, the courts apparently felt that by permitting discretion, limits were hereby established.

The question presented is both novel and substantial. It has never been treated by this court.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,
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Attorney at Law
1142 Meadow Lea Drive
Baton Rouge, Louisiana 70808

Counsel for Appellant,
Ford E. Stinson

APPENDIX A

LOUISIANA STATE BAR ASSOCIATION, Petitioner

v.

FORD E. STINSON, Respondent.

Nos. 59855, 61716.

Supreme Court of Louisiana.

March 5, 1979.

Rehearings Denied April 9, 1979.

In bar disciplinary proceedings, the Supreme Court, Tate, J., held that in light of mitigating circumstances, delay in turning over funds to client and commingling of client funds with funds of attorney warrants three-year suspension.

Suspension ordered.

Summers, C.J., filed dissenting statement and would grant a rehearing.

1. Attorney and Client—Key 58

Disbarment is usual penalty for commingling of client funds and conversion by lawyer, and mere fact of restitution does not excuse imposition of such penalty.

2. Attorney and Client—Key 58

In disciplinary proceedings, lesser penalty is not justified simply because of attorney's age, good reputation during long practice of law and public service, and honorable position as community leader.

3. Attorney and Client—Key 49

Primary objective of disciplinary action is to protect courts and public.

4. Attorney and Client—Key 58

No greater penalty should be imposed in disciplinary action against attorney than that which is required to accomplish purpose of protecting courts and public.

5. Attorney and Client—Key 58

In light of mitigating circumstances, delay in turning over funds to client and commingling of client funds with funds of attorney warrants three-year suspension.

Wellborn Jack, Sr., Shreveport, Ford E. Stinson, Jr., Benton, for respondent.

Leonard Fuhrer, Alexandria, Wood Brown, III, New Orleans, Sam J. D'Amico, Baton Rouge, Harold J. Lamy, New Orleans, Edgar H. Lancaster, Jr., Tallulah, John F. Pugh, Thibodaux, A. Russell Roberts, Metairie, John B. Scofield, Lake Charles, Thomas O. Collins, Jr., New Orleans, Louisiana State Bar Ass'n, Committee on Professional Responsibility, for petitioner.

TATE, Justice*

This court has original jurisdiction of disciplinary proceedings against a member of the Louisiana bar. La.Const. of 1974, Art. 5, Section 5(B). The Louisiana State Bar Association, appearing through its Committee on Professional Responsibility, instituted the present disciplinary proceedings against Ford E. Stinson. Article XV of the Articles of Incorporation of

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*Judge Pike Hall, Jr., of the Louisiana Court of Appeal, Second Circuit, participated in this decision as an Associate Justice Ad Hoc.

the Association (1971), approved by us as a rule of this court. 21A West's LSA Revised Statutes 119 (1974).

In accordance with the procedures authorized by Article XV, a commissioner was appointed and heard evidence. In the commissioner's scholarly and fair detailed report, he concluded that the respondent's conduct provided an adequate basis for the court to impose a serious disciplinary penalty.

The commissioner's hearing resulted from charges set forth in two petitions for disciplinary action.

1. *Charges of Misconduct, (Our) Docket No. 59,855*

The first petition represents three instances of client dissatisfaction: 1. The respondent's unjustified delay and neglect in settling the Flannery succession; 2. The respondent's neglect and alleged failure to make proper preparation for trial in the representation of Loftin, and his commingling and use for a slight period of funds ($3,085) received in settlement of the Loftin claim; and 3. The respondent's delay in expeditiously handling matters representing a Mrs. McDowell, including the Smith succession, and the commingling of $1,167.60 of client's funds in the respondent's bank account.

By the respondent's conduct, his clients were forced to incur regrettable and unnecessary delay in receiving the final settlement of their claims. Further, at least in the Loftin case, he not only deposited the settlement check in his own account but additionally for at least three days used the client's funds.

Nevertheless, taking account of several mitigating factors, including the respondent's ready willingness (in advance of any complaint to the committee) to reduce his fee and to pay interest or otherwise compensate for the delay occasioned by his negligence, the commissioner concluded that these charges

by themselves would not justify the most serious disciplinary action (with the possible exception of the three-day misuse of the Loftin settlement funds).

2. *Charges of Misconduct, (Our) Docket No. 61,716*

The commissioner nevertheless concluded that serious disciplinary action is warranted, considering the totality of the evidence, most particularly because of the respondent's misconduct in connection with the charges proved in connection with the second petition.

As summarized by the commission's brief, with regard to this misconduct the evidence taken at the hearings indicate as a conclusion of law and fact that the respondent attorney, in representing Mr. and Mrs. J. M. Fuller and Terri L. Colley in a personal injury claim against three insurers, did "[r]eceive on their behalf on or about 22 February 1977 the sum of $26,000.00; respondent did commingle said sum with his own and did convert same to his personal and/or business use until on or about 29 July 1977, some five (5) months later, and did further misrepresent and withhold information as to the receipt of said sum of $26,000.00 in settlement."

[1] In argument before this court, the disciplinary committee correctly points out that the drastic remedy of disbarment is the usual penalty for commingling of client funds of the extent here indicated, and its conversion (use or borrowing) by the lawyer, and that the mere fact of restitution by the attorney has not been regarded as sufficient reason to excuse imposition of this penalty.

The committee cites to us the following decisions to this effect: *Louisiana State Bar Association v. Weysham*, 307 So.2d 336 (La.1975); *Louisiana State Bar Association v. Levy*, 292 So.2d 492 (La.1974); *Louisiana State Bar Association v.*

Brown, 291 So.2d 385 (La.1974); *Louisiana State Bar Association v. Selenberg*, 270 So.2d 848 (La. 1972); *Louisiana State Bar Association v. Jacques*, 260 La. 803, 257 So.2d 413 (1972); *Louisiana State Bar Association v. Blum*, 256 La. 530, 237 So.2d 366 (1970); and *Louisiana State Bar Association v. Haylon*, 250 La. 651, 198 So.2d 391 (1967).

Conclusion

Nevertheless, we ultimately conclude that, while severe disciplinary action is warranted by the respondent's conduct, the drastic remedy of disbarment is not appropriate under the present facts and circumstances.

1. Here, unlike in the cited decisions, the complete payment to the client of all monies due occurred prior to any disciplinary complaint being made. Unlike in the cited instances, there is no indication that, but for the disciplinary proceedings, the lawyer might not ever have paid his client the sums due, and most of the decisions reflect theft from or an intent to defraud a client. In short, the present respondent's conduct is indicative more of procrastination and carelessness than dishonesty.

2. The six-month delay in turning over to the client the money collected for him is inexcusable. It appears, however, to have been motivated more by the lawyer's desire to complete collection of a claim against another insurance policy and to make a final adjustment of the entire representation, than by any desire to misuse the client's money.

Absolutely no excuse justifies the lawyer's response to his client on the five or six inquiries over the five months that the papers had not been completed, nor the lawyer's failure to turn over to his client the latter's money. On the other hand, the misconduct was primarily motivated by a desire to put off

computing amounts due (until the medical payments coverage proceeds were received) rather than by greed or a dishonest intent to use the client's money.

For instance, the lawyer volunteered to and did deduct over three thousand dollars from his $6,500 fee, which was itself a one-fourth rather than the usual one-third contingency fee. As the client admitted, the lawyer also offered to waive his fee entirely if the client was dissatisfied, but the client was unwilling to accept this offer since he realized that the lawyer had earned his fee. This was all in advance of any complaint to the bar association.)

3. Likewise, little excuse can be offered for the lawyer's misconduct in failing to segregate his client's money in a separate account, and for permitting his personal balance to fall from time to time to an amount low enough to encroach on the sums in the account belonging to the client. The record shows the lawyer to be a highly individualistic sort of person, who felt that his maintaining collateral in the bank and cash in two special safety deposit boxes for the purpose of securing his clients was sufficient to protect the matter, despite his failure to segregate his client's money in a separate account as required by the disciplinary rules of the bar association. (The lawyer now maintains a special account into which he deposits his clients' monies.)

The record reflects that the respondent lawyer, now aged 64, has practiced law with an honorable reputation for some 42 years and has in the past (before his retirement from political life) served in the legislature with distinction for 24 years. During the period of the charges, it reflects the lawyer to have run a busy one-man law-practice, as well as having engaged in an active civic and public service and in farming activities.

[2] The disciplinary committee points out, correctly, that a lesser disciplinary penalty is not justified simply because of the respondent's age, good reputation during his long practice of law and public service, and honorable position as a community leader — perhaps the converse is true.

On the other hand, we do not feel that the most severe sanction of disbarment is required, under the totality of the evidence. This shows:

That the respondent attorney did good and honest work for his clients (if slowly); that no client lost money by his actions (nor is there the slightest hint of dishonest intent in the lawyer's procrastination); that indeed of his own volition (before any bar complaint) in each instance he attempted to minimize any client loss occasioned by his own delay by cutting his fees, which were in any event minimal rather than excessive; and that the lawyer had attempted to rectify his negligence or delay before any complaint was made to the disciplinary authorities.

[3-5] As we stated in *Louisiana State Bar Association v. Cox*, 252 La. 978, 215 So.2d 513, 515 (1968): "The primary objective of such disciplinary action is to protect the courts and the public. No greater penalty should be imposed than that which is required to accomplish this purpose." Under all the circumstances here reflected, we think a suspension of three years will accomplish the disciplinary purpose.

Decree

Accordingly, it is ordered that Ford E. Stinson be suspended from the practice of law in the State of Louisiana for a period of three years, effective upon the date of finality of this decree. All costs of this proceeding shall be paid by the respondent.

ATTORNEY SUSPENDED FROM PRACTICE OF LAW FOR THREE YEARS.

SUMMERS, C. J., dissents. I am of the view that suspension from the practice for two years is adequate under the facts of this case.

APPENDIX B

SUPREME COURT OF LOUISIANA
New Orleans, 70112

FOR IMMEDIATE NEWS RELEASE

On the 9th day of April, 1979, the following action was taken by the Supreme Court of Louisiana in the cases listed below:

REHEARINGS GRANTED:

62,767 State v. Hatcher

63,007 Kidd v. Caldwell

REHEARINGS DENIED:

62,768 Marathon Pipeline v. Pitcher
TATE, MARCUS & DENNIS, J.J., would grant a rehearing.

59,855 L.S.B.A. v. Stinson
61,716 SUMMERS, C.J., would grant a rehearing.
MARCUS, J., did not participate.

62,625 State, Dept. of Hwys. v. Constant
MARCUS, J., did not participate.
BLANCHE, J., recused.

63,604 State v. Jones
DIXON, J., would grant a rehearing.
MARCUS, J., did not participate.

62,997 State ex rel Fields v. Maggio
MARCUS, J., did not participate

62,863 State v. White

62,946 Niemann v. Travelers
SUMMERS, C.J., MARCUS & BLANCHE, J.J., would grant a rehearing.

63,056 Credeur v. Luke
63,430 SUMMERS, C.J. would grant a rehearing.
MARCUS, J., not participating.

62,560 Hall v. Ark-La. Gas

62,184 State v. Catanese
TATE, J., would grant a rehearing.
BLANCHE, J., did not participate.

62,963 I. C. Gulf RR v. International Harvester Co.
MARCUS, J., would grant a rehearing.

63,035 Guillotte v. Houston General Ins. Co.
SUMMERS, C.J. & BLANCHE, J., would grant a rehearing.
MARCUS, J., not participating.

62,907 State v. Welsh & Smith
DENNIS, J., would grant a rehearing.

63,173 State v. Clement
MARCUS, J., not participating.

63,129 Johnson, et al v. Occidental Life
MARCUS, J., not participating.

63,032 State v. Strahan
CALOGERO, J., would grant a rehearing.
MARCUS, J., not participating.

63,039 State v. Bursh

62,901 State v. Paul Sanders

63,182 State v. Nelson James Perkins

63,332 State v. John Boudreaux, Jr.

APPENDIX C

IN THE SUPREME COURT OF THE

STATE OF LOUISIANA

LOUISIANA STATE BAR ASSOCIATION
versus
FORD E. STINSON

Numbers 59,855 and 71,716

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE
UNITED STATES

Notice is hereby given that FORD E. STINSON, the respondent above named, hereby appeals from the final judgment of the Supreme Court of the State of Louisiana, entered in this action on the 5th day of March, 1979. An application for rehearing was denied on the 9th day of April, 1979.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

/s/ C. C. Wood

C. C. WOOD
Attorney at Law
1142 Meadow Lea Drive
Baton Rouge, Louisiana 70808

SUPREME COURT OF LOUISIANA
FILED JUNE 27, 1979.
/s/ Frans J. Labranche, Jr.
CLERK

PROOF OF SERVICE

I hereby certify that a copy of the above and foregoing notice has this day been mailed to the Honorable Attorney General, William J. Guste, Jr., State Capitol, P. O. Box 44005, Baton Rouge, Louisiana 70804 and Thomas O. Collins, Jr., Esquire, Executive Counsel, Louisiana State Bar Association, Suite 210, 225 Baronne Street, New Orleans, Louisiana 70112.

I further certify that said service was made in accordance with Rule 33.1, Rules of the Supreme Court; and that all parties required to be served have been served.

Baton Rouge, Louisiana, this the 27th day of June, 1979.

/s/ C. C. Wood

C. C. WOOD
Counsel for Ford E. Stinson

APPENDIX D

ARTICLE XV. DISCIPLINE AND DISBARMENT OF MEMBERS

Section 1. Committee on Professional Responsibility

The Committee on Professional Responsibility shall consist of nine (9) active members of this Association, one from each Congressional District, save the First and Second, and two from those Districts, combined, and one from the State at large. The Committee on Professional Responsibility shall be appointed by the Supreme Court on the recommendation of the Board of Governors. The members of the Committee shall be appointed for a term of five (5) years each.. The members of the Committee may be appointed for not more than two (2) full successive terms but in no event shall a member serve more than ten (10) successive years. The Committee shall elect its own Chairman, and may divide itself into panels, according to rules to be adopted by the Committee. All members of the Committee shall continue to serve after the expiration of their respective terms of office, until their respective successors have been duly appointed and qualified.

Section 2. Counsel

The Executive Counsel of the Louisiana State Bar Association shall serve as Counsel for the Committee on Professional Responsibility.

Section 3. Complaints

All complaints of alleged unprofessional conduct shall be received and investigated by or under the direct control and supervision of the Committee on Professional Responsibility or

its counsel. The Committee may employ the necessary staff to aid in its investigation. Procedures governing such investigations shall be established by the Committee but shall include the following:

(a) *Initial Notice and Investigation* — The respondent shall be given notice thereof in writing. This initial notice may, in the discretion of the Committee or its counsel, be delayed until a preliminary investigation has been completed. In such initial notice the respondent will be granted fifteen (15) days within which to reply. A respondent who has been given such notice of the complaint lodged against him and who has failed to respond thereto within the time specified, may be compelled to appear before the Committee in person, provided the Committee shall have given him a second such notice in writing wherein he is warned that he will be formally subpoenaed upon his failure to respond to this second notice. Upon the written application of the Committee signed by a member thereof or its counsel, showing that the respondent has failed to respond after the receipt of the notices outlined above, the Clerk of the Louisiana Supreme Court, or, in his absence, one of his deputies shall issue a subpoena in the name of the Court ordering him to appear before the Committee or its counsel. Such subpoena shall be served upon the individual to whom addressed by any duly authorized sheriff, deputy sheriff, constable, deputy constable, or other public official authorized by law to make service of process in civil proceedings in the jurisdiction wherein the subpoena is to be served. Upon failure of the respondent to so appear, the Committee or its counsel is authorized to institute contempt proceedings immediately against such person in accordance with the laws of this state governing contempt proceedings.

(b) *Formal Investigative Hearing* — Upon the receipt and evaluation of the reply of the respondent and of other evi-

dence in its possession, the Committee may in its discretion order that a formal investigative hearing be held.

The respondent shall be notified in writing of such hearing. This notice will include detailed specifications of the misconduct alleged, the time and place of the hearing, and notice that the respondent will be afforded a reasonable opportunity to defend himself before the Committee or a panel thereof designated by the Committee, by introducing evidence, by cross-examining the witnesses against him and by representation by counsel.

Both the Committee and the respondent shall have the right to compel the attendance of witnesses at such formal hearings, and shall have the right to compel the production of any books, records, documents or other evidence that may be relevant to the matter under investigation; and to that end the Committee or its counsel may issue in the name of the Supreme Court of Louisiana subpoenas for witnesses and subpoenas duces tecum for the production of documents.

Section 4. Disciplinary Proceedings

After its investigation the Committee by majority vote shall take any of the following actions:

(a) Dismiss the complaint and so notify in writing the complainant and respondent.

(b) Issue a reprimand as set forth in Section 5 of this Article.

(c) Institute in the Supreme Court a suit for the disbarment or suspension of the respondent. Provided, that the decision to file such a suit must be preceded by the formal investigative hearing provided in paragraph (b) of Section 3 of this Article.

Section 5. Reprimands

(a) *Private Reprimands*

If after its investigation the majority of the Committee is of the opinion that the respondent has not been guilty of such misconduct as to require a suit for disbarment or suspension, but is nevertheless of the opinion that the member has been guilty of a wilful violation of the Code of Professional Responsibility, it shall be the duty of the Committee to reprimand the respondent privately in writing. If in the opinion of the majority of the Committee the offense committed is such as to warrant a notification to the complainant and other interested parties the Committee shall notify the respondent of its intention to send a copy of this reprimand to the complainant and other interested parties. The respondent so notified shall have a period of ten (10) days from the receipt of such notification within which to appeal to the Supreme Court for an order commanding the Committee not to send a copy of such reprimand to the complainant and to other interested parties. At the end of said ten (10) day period if the respondent has not taken such an appeal the Committee may then forward to the complainant and to other interested parties a copy of said reprimand. These proceedings and the record thereof shall be kept confidential at all times.

(b) *Reprimand — Public*

Likewise if after its investigation and the holding of the formal investigative hearing provided in paragraph (b) of Section 3 of this Article, a majority of the Committee shall be of the opinion that the respondent has not been guilty of such misconduct so as to require a suit for disbarment or suspension but is nevertheless of the opinion that a public reprimand should be given because such conduct has been harmful to the

bar as a whole or because of the publicity given to such misconduct, the Committee shall have the authority to reprimand the respondent publicly. Before making such reprimand public however, it shall be the duty of the Committee to notify the respondent in writing of its intention so to do and the respondent shall have ten (10) days after the receipt of such notice to appeal to the Supreme Court for an order commanding the Committee to refrain from such action until a hearing is had before the Court. If appealed the matter shall then be submitted to the Court based upon the record and findings of the formal investigative hearing and without the necessity of appointing a commissioner to take further evidence. If the Court affirms the Committee's decision to issue such reprimand, the Committee may then take such action. If the Court reverses the Committee's decision the Committee shall not thereafter issue such a reprimand. These proceedings and the record thereof shall be kept confidential until the time for appeal has elapsed without action by the respondent or until finally acted upon by the Supreme Court adverse to the position of the respondent appellant.

Section 6. Disbarment and Suspension Suits

If, as set out in Section 4 of this Article, the Committee by majority vote is of the opinion that the respondent has been guilty of a violation of the laws of this State relating to the professional conduct of lawyers and to the practice of law or of a wilful violation of any rule of the Code of Professional Responsibility of sufficient gravity as to evidence a lack of moral fitness for the practice of the law, it shall be the duty of the Committee to institute in the Supreme Court a suit for the disbarment or suspension of the respondent. The Committee shall designate one or more of its members or its counsel to prosecute such suit. The proceedings shall be governed by the following procedures:

(a) *Service of Petition* — Service of the petition for disbarment shall be made upon the respondent against whom such action is brought. All such service shall be in the manner now or hereafter provided by law for the service of citation in civil suits in this State. The respondent shall be required to plead or answer within fifteen (15) days from the date of service of a copy of the petition. If the Court shall be satisfied that the respondent resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid service of citation, the Court shall appoint an attorney at law to represent the respondent, against whom all proceedings shall be carried on contradictorily, with the same effect as if the respondent had been personally served. All exceptions, whether dilatory, declinatory or preemptory must be filed at one and the same time. If the respondent should have been served but fails to appear to plead or answer within the time allowed, the Committee may proceed ex parte.

(b) *Hearing* — When issue is joined or when the respondent has not appeared to plead or answer within the time allowed, the court may hear the evidence, or the court may appoint a commissioner to take the evidence. The commissioner shall serve without compensation and shall be a lawyer who has been engaged in active practice as a member of the Association for not less than ten (10) years. The commissioner shall regulate all the proceedings before him and he shall have full authority to examine the parties on the cause upon oath, touching all matters contained in the petition. He may require by subpoena duces tecum the production of all books, papers, writings and other documents applicable thereto, and examine on oath all witnesses produced by the parties before him. He may cause the testimony of absent witnesses to be taken as hereinafter provided for, and direct the place where, and the manner in

which, the matters requiring evidence, shall be proved before him. He shall have the right to compel by subpoena the attendance of witnesses before him from any part of the state, and generally, to do all other acts, and direct all other inquiries and proceedings in the matters before him which he may deem necessary and proper to the justice and merits of the matter, and the rights of the parties.

(c) *Testimony of Absent Witness*—If a witness whose testimony is material to the cause resides out of the parish in which the case is to be tried, either before the court or the commissioner appointed by the court, the testimony of the witness may be taken according to the forms prescribed by law for the taking of such testimony in civil cases in the district courts of the state; or if the witness resides out of the state or is absent from the state, his or her testimony may be taken in the form of depositions in answer to written interrogatories and cross-interrogatories, under a commission, issued by the court, or by the commission, if one has been appointed, and directed to a notary public or other officer authorized to administer oaths and take depositions; provided, that, if the testimony is taken in the form of depositions in answer to written interrogatories, the respondent, or his attorney, and an attorney appointed by the Committee, shall have the right to attend the taking of the testimony and to cross examine or re-examine the witness orally; and provided further that, whether the testimony is to be taken in the form of depositions or of written interrogatories, the court, or the commissioner, if one has been appointed, shall fix the time and the place for the taking of testimony.

(d) *Report of the Commissioner* — Upon the termination of the hearing, the commissioner shall file with the Supreme Court his written report wherein he will state his findings of fact and conclusions of law. The parties shall have twenty

(20) days from the time of the filing of the report to file exceptions thereto, and if no exceptions are, within that period, filed by either party, the report shall be confirmed. If exceptions are filed, they shall be heard by the court on the summary docket on the record prepared by and before the commissioner.

(e) *Practice before Commissioner* — Except as otherwise provided herein, the practice before the commissioner shall conform as near as may be to the procedures of civil suits before the district courts of this state. The commissioner shall have the right to certify parties, members of the bar, or witnesses, to the Supreme Court for contempt of his authority.

(f) *Disbarment and Suspension Suits* — All suits for the disbarment or suspension of members of the bar shall be instituted in the name of the Louisiana State Bar Association, and at the cost of the respondent, if the decision is adverse to him; otherwise without costs.

Section 7. Complaints Involving Material Allegations That Are Also the Subject of Pending Criminal or Civil Matters

In the event the Committee on Professional Responsibility is presented with a complaint against an attorney, which also involves material matters and allegations that are then, or later become the subject of a criminal charge against the attorney (hereinafter referred to in this Section merely as "criminal case or cases") or is the subject of a civil suit wherein the attorney is the defendant, and which involves allegations of attorney misconduct (hereinafter referred to in this Section merely as "Civil case or cases"), the disciplinary proceedings shall be conducted as follows:

(a) *Criminal Cases*

(1) With the exception of those cases involving unusual delays as set forth hereinbelow, any formal hearings with reference to the disciplinary proceedings shall be deferred until

the criminal case has become final and all appeals have been concluded and the delays therefor have expired, subject however to the provisions of Section 8 hereinafter.

(2) There shall be no deferral of any necessary investigation in connection with the disciplinary proceedings while the criminal case may be pending. In this respect, the Committee may coordinate its efforts with the efforts of those handling the investigation in connection with such pending criminal case.

(3) The status of all criminal cases involving attorneys shall be followed carefully by the Committee.

(4) Generally the disciplinary proceedings shall be deferred until the determination of pending criminal litigation involving substantially similar material allegations, provided that the respondent proceeds with reasonable dispatch to insure the prompt prosecution and conclusion of the pending litigation. If in the opinion of the Committee, there is an unreasonable delay in the disposition of the pending criminal case, the Committee may then petition the Supreme Court for issuance of a rule to the attorney to show cause why the disciplinary proceedings should not continue to conclusion. The respondent attorney may, within fifteen (15) days from the date of service of said petition, file his answer to the petition with the Clerk of the Supreme Court. The Supreme Court shall then rule on the matter without hearing, or order the appointment of a Commissioner and direct that a hearing be held on the rule in the usual manner.

(b) *Civil Cases*

Disciplinary proceedings shall not be deferred on the ground that the respondent is a party to civil litigation which involves attorney misconduct.

Section 8. Conviction of a Crime

The following rules shall be applicable when a respondent has been convicted of a crime, to-wit:

(1) Upon learning that an attorney has been convicted of a crime, whether the conviction results from a plea of guilty or nolo contendere or a verdict after trial, the Committee on Professional Responsibility may secure a certificate of such conviction from the applicable Clerk of Court.

If the conviction is obtained in a Court of another state or a Federal Court, the Committee upon learning of the conviction, shall obtain two (2) copies of a certificate of conviction from the proper Court, and shall retain one (1) copy and may forward the other copy to the Supreme Court.

(2) The Committee shall then make a determination whether or not the crime of which the attorney has been convicted constitutes a serious crime. The term "serious crime" means a felony or any other crime, the necessary element of which as determined by the statute defining such crime, reflects upon the attorney's moral fitness to practice law.

It will be necessary for the Committee in determining whether or not the crime constitutes a "serious crime," to study the statute defining the crime, particularly if the crime involves the violation of a statute of the Federal Government or another state or jurisdiction.

(3) Upon completing its determination as to whether or not the crime constitutes a "serious crime," the Committee shall file a written report with the Supreme Court, setting forth its findings and conclusions.

(4) If the Supreme Court should concur with the opinion of the Committee that the crime of which the attorney has been convicted constitutes a serious crime, the Supreme Court may suspend the respondent from the practice of law and order

the Committee to institute the necessary disciplinary proceedings, provided however, that the disciplinary proceedings so instituted will not, unless requested by the accused, be brought to a hearing until all appeals from the conviction are concluded.

(5) If the Committee in its report to the Supreme Court has concluded that the crime of which the attorney has been convicted is not a serious crime, or if the Supreme Court should determine independently that the crime is not a serious crime, the Supreme Court will refer the matter back to the Committee.

(6) An attorney will be reinstated immediately on the reversal of his conviction for a serious crime that has resulted in his suspension, but the reinstatement will not terminate any disciplinary proceedings then pending against the attorney.

(7) After the conviction has become final, that is, all appeals have been concluded or exhausted, the procedure shall be as follows:

(a) The Committee will file a petition in the Supreme Court seeking disbarment or any other remedy that the Committee deems appropriate, and the petition will be served upon the respondent in the same manner as in ordinary proceedings.

(b) When issue is joined by answer by the respondent, a Commissioner will be appointed by the Supreme Court to represent the Court in the same manner as in ordinary proceedings.

(c) At the hearing before the Commissioner, the certificate of the conviction of the respondent shall be conclusive evidence of his guilt of the crime for which he has been convicted.

(d) At the hearing based upon a respondent's conviction of a crime, the sole issue to be determined shall be whether the crime warrants discipline, and if so, to the extent thereof.

At the hearing the respondent may offer evidence only of mitigating circumstances not inconsistent with the essential elements of the crime for which he was convicted as determined by the statute defining the crime.

(8) Except as provided hereinabove in this Section, the procedure with reference to proceedings based on a conviction of a crime, shall be conducted in the same manner as in ordinary proceedings.

Section 9. Mental Disability and Addiction

(a) When a member of this Association has been interdicted or has been involuntarily committed to a mental hospital, the Committee on Professional Responsibility may present to the Supreme Court proper proof of this fact, and the Court shall enter an order suspending such attorney from the practice of the law, effective immediately until further order of the Court. A copy of such order shall be served upon such attorney, his curator, and/or director of the mental hospital in such manner as provided in the law for the service of citations in civil suits.

(b) When the Committee on Professional Responsibility has reason to believe that a member of this Association is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, the Committee shall petition the Supreme Court to determine whether such attorney is incapacitated. The Court may take, or through its Commissioner direct, such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including examination of the attorney by such qualified medical experts as the Court shall designate. If, upon full consideration of all evidence so adduced, the Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order suspending him on the

ground of such disability until further order of the Court. Any pending disciplinary proceedings against the attorney may be held in suspense upon the issuance of such an order of suspension.

The Court may hear such evidence itself, or the Court may appoint a commissioner to take the evidence and report his findings to the Court. The appointment, proceedings by and the report of the Commissioner shall be controlled by the provisions in Section 6 of this Article.

(c) If, during a disciplinary proceeding the respondent contends that he is suffering from a disability because of mental infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for the respondent adequately to defend himself, the Court shall enter an order suspending the respondent from continuing to practice law until a determination is made of the respondent's capacity to continue the practice of law in a proceeding instituted in accordance with the provisions of paragraph (b) of this Section. If after such proceeding the Court shall determine that the respondent is not so incapacitated, it shall revoke the suspension and order the resumption of the disciplinary proceedings against the respondent.

(d) Any attorney suspended under the provisions of this Section shall be entitled to apply for reinstatement. Such application shall be granted by the Court upon a showing by clear and convincing evidence that the attorney's disability has been removed and that he is able to resume the practice of law. Upon such application, the Court or its Commissioner, under paragraph (b) of this Section, shall take such action as it deems required, including an examination of the attorney by qualified medical experts. The Court may direct that the expense of such an examination be borne by the attorney.

Where an attorney has been suspended by an order issued under the provisions of paragraph (a) of this Section and thereafter has been judicially declared to be competent, the Court may dispense with further evidence that the disability has been removed and may direct reinstatement.

Section 10. Records and Publicity

(a) It shall be the duty of the Committee to keep a permanent record of all complaints concerning professional misconduct of the members of the Association and its findings and action thereon. Except as provided in Section 5 and 11 of this Article and as hereinafter provided, until such time as the Committee files with the Supreme Court an action for the suspension or disbarment of the respondent, its records on the investigation of and the proceedings against a member of this Association are and shall remain confidential.

(b) A member of this Association may waive the confidentiality of the records of the Committee involving complaints and charges against him. The waiver must be in writing and signed by the members taking such action.

(c) The existence of a pending disciplinary proceeding shall be a matter of public record if the charges are based on a final conviction for a serious crime, or if the respondent-attorney, following the filing of formal charges, make a written request for public hearings. Except as otherwise provided in the Article XV, such proceedings shall be kept confidential until the Committee has filed a suit for disbarment or suspension with the Supreme Court. "Final Conviction" as used in this paragraph means a conviction which has been sustained after final appellate review, or from which no appeal has been taken.

(d) From time to time but not less than annually the Chairman of the Committee on Professional Responsibility shall release to the members of the Association reports on the activi-

ties of the Committee which shall include publication in the Louisiana Bar Journal. The reports shall include the names of attorneys who have been disbarred, suspended or reprimanded publicly; and may also include general statistics and information concerning hearings, informal admonitions and private reprimands without disclosing the identities of the attorneys concerned.

(e) Except where otherwise provided for in Article XV, disciplinary proceedings once filed in and pending before the Supreme Court of Louisiana, and all suspensions, reprimands, and other disciplinary action decreed by the Supreme Court of Louisiana, and public reprimands, issued by the committee under section 5(b) of Article XV herein, shall be matters of public record and publicity thereon governed accordingly.

Section 11. Resignations

(a) A respondent subject to an investigation into allegations of misconduct on his part, may submit his resignation by submitting to the Committee on Professional Responsibility of the Louisiana State Bar Association, a petition, addressed to the Supreme Court of the State of Louisiana, requesting approval, by Order of the Court, to resign. The respondent shall accompany the petition with an affidavit, which must state that:

(1) His resignation is freely and voluntarily rendered; he is not being subjected to coercion or duress; and he is fully aware of the implications of submitting his resignation;

(2) He is aware that there is pending an investigation into allegations that he has been guilty of misconduct, the nature of which he shall specifically set forth;

(3) He acknowledges that the material facts upon which the complaint is based are true;

(4) He recognizes that these charges are of sufficient gravity as to be the basis for removing him from the practice of law in the State of Louisiana;

(5) He submits his resignation because he knows if said charges were pursued by the Committee on Professional Responsibility, predicated on the investigation now being conducted by said Committee, he could not successfully defend himself against them.

(b) On receipt of the required Petition and accompanying affidavit the Committee on Professional Responsibility shall file it with the Clerk of the Supreme Court and said Court shall enter an order disbarring the respondent by "consent".

The Order of Disbarment (consent) shall be a matter of public record. The Secretary of the Louisiana State Bar Association shall report the resignation in the same manner as with Disbarments, noting that the Resignation is accompanied by a confession to the misconduct or the admission of the material facts constituting the misconduct and the resulting Disbarment on consent.

Section 12. Reinstatement

(a) A minimum of five (5) years must elapse following disbarment before the disbarred attorney may apply for reinstatement.

(b) The mere passage of time without incident is considered inadequate to warrant reinstatement. Reinstatement may be granted only after the disbarred attorney has met the following requirements and has filed a petition for reinstatement in accordance with provisions of sub-paragraph (c) of this section:

(1) On the strong affirmative showing by the applicant in support of his application to be restored to practice that he

now possesses good moral character.

(2) Additionally, the disbarred attorney shall negate the likelihood of possible future misconduct and shall show that he is now a fit person to be readmitted to the practice of law, notwithstanding his previous disciplinary action

(c) The original petition for reinstatement (in such form and accompanied by such exhibits as the Louisiana Supreme Court shall prescribe) and three copies thereof, verified by petitioner, shall be addressed to the Louisiana Supreme Court, and filed with the Clerk of the Louisiana Supreme Court. The information required concerning the petitioner may include any or all of the following matters in addition to such other matters as may be reasonably required to determine the fitness of the petitioner to resume the practice of law: criminal and civil judgments; disciplinary judgments; copies of income tax returns together with consents to secure original returns; occupation during disbarment and information in connection therewith; financial statement; statement of restitution of funds which were the subject matter of disciplinary proceedings.

An executed copy of the petition for reinstatement shall be served promptly upon the Counsel of the Committee on Professional Responsibility of the Louisiana State Bar Association, and the Committee, acting through one or more of their number, may appear in the proceedings and investigate carefully the allegations advanced by the attorney in support of his application for reinstatement. The Committee shall, in its investigation, consider the nature of the original offense, the circumstances surrounding it, the reasons for disbarment, and all other pertinent matters or conduct arising both before and after the date of disbarment in evaluating an application for reinstatement.

(d) The Committee, at the conclusion of its investigation, shall file a written report, with recommendations, either

supporting or opposing the petition. The action of the Committee shall then be reported to the applicant. If the Committee does not recommend approval of the application for reinstatement, after compliance with the provisions of Paragraphs (a), (b) and (c), above, a hearing before the Committee on Professional Responsibility of the Louisiana State Bar Association, at the cost of the applicant, shall be granted to the applicant on his written request, within twenty (20) days from receipt of the Committee's recommendation, at which hearing evidence may be presented and the witnesses and the attorney testify, subject to cross-examination.

(e) The Committee at the conclusion of its investigation, or, if a hearing has been requested, at the conclusion of the hearing and the investigation, shall file the record and a written report, with recommendations, either supporting or opposing the petition, with the Court, which recommendations shall be given great weight by the Court in reaching its decision.

(f) The cost of the original disbarment and a fee of $25.00 for filing an application for reinstatement shall be paid by the applicant to the Louisiana State Bar Association, through the office of its Executive Counsel, at the time of the initial filing of his petition for reinstatement. The costs of the original disbarment include reporters fees, witnesses fees, and such other costs as are usually taxed in civil proceedings. The petition for reinstatement shall not be accepted by the Court until all costs assessed against the petitioner in the original disciplinary proceeding have been paid, and the fee for filing the application for reinstatement has been paid.

(g) No petition for reinstatement shall be filed within one (1) year following an adverse judgment on a petition for reinstatement filed by or on behalf of the same person.

(h) It is the responsibility of an attorney who has

been disbarred to adequately notify his clients in order that they may take appropriate measures to secure other counsel and otherwise protect their interests. The degree and manner in which the disbarred attorney has discharged this obligation will be considered at the time a petition for reinstatement is filed. If in the Court's opinion the said attorney has failed in this responsibility, the Court may deny the petition for reinstatement.

Section 13. Privileges and Immunities

Complaints filed with the Committee in accordance with these rules shall be absolutely priviledge and all communications and evidence predicated thereon shall not be admissible in any court in this State in proceedings against the person filing such complaints. Members of the Committee, its counsel, investigators and staff shall be immune from suit for any conduct in the course of their official duties performed in accordance with these rules.

All communications between the Committee, its counsel, investigators and staff shall be privileged and shall not be admissible as evidence in any proceeding other than those authorized under Article XV hereof.

Section 14. Definitions

(a) "Association" means the Louisiana State Bar Association.

(b) "Commissioner" means the member of the Louisiana State Bar Association appointed by the Supreme Court of Louisiana to take evidence in disbarment and suspension suits.

(c) "Committee" means the Committee of Professional Responsibility of the Louisiana State Bar Association.

(d) "Committee's Counsel" means the counsel for the

Committee on Professional Responsibility of the Louisiana State Bar Association.

(e) "Court" means the Supreme Court of the State of Louisiana.

(f) "Respondent" means the member of the Louisiana State Bar Association against whom a complaint, charges and/or petition for disciplinary action has been filed.

Section 15. Effective Date

The provisions of Article XV as herein set forth shall become effective on the date of the order of the Supreme Court of Louisiana approving said Article.

Section 16 Constitutionality

Should one or more provisions of this article be held unconstitutional, or otherwise invalid by a court of competent jurisdiction, it shall net have the effect of annulling the remaining provisions.

APPENDIX E

LOUISIANA STATE BAR ASSOCIATION,
Petitioner

VERSUS

FORD E. STINSON,
Respondent

NOS. 59,855 and 61,716
(Consolidated)

APPLICATION FOR LEAVE TO FILE A SUPPLEMENTARY APPLICATION FOR A REHEARING AND REQUEST FOR ADDITIONAL TIME TO FILE A BRIEF IN BEHALF OF FORD E. STINSON, IN CONNECTION WITH SAME

The application of FORD E. STINSON, respondent in the above numbered and entitled causes, with respect shows that the ruling and opinion of this Honorable Court rendered on the 5th. day of March, 1979, suspending the respondent from the practice of law for three years is erroneous and contrary to the law and the evidence and is prejudicial to the respondent for the following reasons, in addition to those reasons set forth in that Application for Rehearing filed herein on the 16th. day of March, 1979:

1.

That the respondent has heretofore filed an Exception of No Cause or Right of Action herein and the same was referred to the merits. That the said Exception has never been overruled, or any action whatsoever taken by this Honorable Court with reference to a disposition of such Exception. That in

connection with such Exception of No Cause of Action, the attention of the Court is invited to the provisions of Paragraph 5 of the Original Petition filed herein in Action No. 59,855 and Paragraph 5 of No. 61,716, which states "that the Respondent has been guilty of a violation of the laws of this State relating to the professional conduct of lawyers and to the practice of law of sufficient gravity as to evidence a lack of fitness for the practice of law." That there has been no showing, no allegation, nor proof of any laws of the State of Louisiana with reference to the professional conduct of lawyers or to the practice of law and therefore, said Exception of No Cause of Action should have been sustained.

2.

That Article 5, Section 5(B) of the Louisiana Constitution of 1974 provides:

> "The Supreme Court has exclusive original jurisdiction of disiciplinary proceedings against a member of the bar."

That the provisions of said Constitutional provision are so vague and indefinite that as applied to the respondent, it would be unconstitutional because of the fact that there is no definition of "disciplinary proceedings"; that there are many and varied definitions of "disciplinary proceedings", and of the word "disciplinary"; that there is also no limitation on the powers that are delegated in said provision to this Honorable Court; under thoese unlimited powers the Court could order many and varied forms of disciplinary punishment, for example, from one far-fetched extreme to the other: it could have the respondent executed, or could order the respondent to go stand in the corner of the room; this Honorable Court could also fine an attorney and also have him imprisoned; that the said Constitutional provision, as applied to respondent, is ultra vires and a

denial of his equal protection under the Constitution of the State of Louisiana and the United States Constitution and denial of due process, especially as guaranteed and protected by the 5th. and the 14th. Amendments of the United States Constitution and Article 1, Section 2 of the Louisiana Constitution of 1974; the provisions of said Article 5, Section 5(B) of the Louisiana Constitution of 1974 are arbitrary, capricious and unreasonable and too vague and indefinite and such as applied by this Honorable Court does violate the respondent's Constitutional rights as set forth hereinabove, all of which are specially pleaded.

3.

That the attention of this Honorable Court is invited to the provisions of Article 7, Section 10 of the Louisiana Constitution of 1921, which was of course superceded by the 1974 Constitution; that the said Article 7, Section 10 of the Constitution of 1921 as pertaining to the Supreme Court set forth as follows:

> "It has exclusive original jurisdiction of disbarment cases involving misconduct of members of the bar, with the power to suspend or disbar under such rules as the court may adopt . . ."

That provisions of this type are totally lacking in the Louisiana Constitution of 1974.

4.

That the appointment of a Commissioner by this Honorable Court is an illegal delegation of authority and jurisdiction and violates the provisions of Article 5, Section 5(B) of the Constitution of 1974; under this provision of the Constitution the Supreme Court has exclusive original jurisdiction of disciplinary proceedings against a member of the bar and there is no authorization for the delegation of this authority to a Commissioner, or any other person, or any other body, and it does deny and violate all due process rights of the respondent guaranteed by the 5th. and 14th. Amendments of the United States Constitution and by Article 1, Section 2 of the Louisiana Constitution of 1974 and is ultra vires and a denial of equal protection as to respondent, all of which are specially pleaded.

5.

That provisions of Article XV of Articles of Incorporation of the Louisiana State Bar Association are too vague and indefinite as pertains to suspension of attorneys; the said provisions of Article XV primarily deal with disbarment and not suspension; Section 6, of Article XV states that it shall be the duty of the Committee to institute in the Supreme Court a suit for disbarment or suspension of a respondent and essentially the other provisions of Section 6 only provide for and cover disbarment proceedings and do not directly refer to suspension; the provisions of Article XV cover different requirements for those that have been disbarred, such as notifying clients, and also Section 12 of Article XV deals with reinstatement following disbarment but there is no provision in Article XV setting forth the limitations as to suspension; that because the provisions of Article XV have no limitations as to suspension, it is foreseeable that a person could be suspended for life, or for any period of time depending on the sole discretion of the Court; that provisions and guidelines for suspension matters and decisions are completely absent, or are so vague and indefinite that they result in Article XV, insofar as to provision for suspension, being unconstitutional as applied to the respondent and the same is ultra vires and results in the denial of equal protection for the respondent and denies him the due process as guaranteed him under the provisions of the 5th. and 14th. Amendments of the United States Constitution and Article 1, Section 2 of the

Louisiana Constitution of 1974, all of which are specially pleaded.

6.

Section 15, of Article XV of Articles of Incorporation of the Louisiana State Bar Association, states that the provisions of Article XV shall become effective on the date of the order of the Supreme Court of Louisiana approving the said article. There has been no proof as to the approval of the Supreme Court of Louisiana of such Article XV, nor has there been any date of approval shown; it is contended that in the event the Supreme Court did approve Article XV and such approval was prior to the effective date of the 1974 Constitution, that there is no provision for the perpetuation of old Article XV under the provisions of the Constitution of 1974 and that in the event this Honorable Court had the authority to delegate such authority that the enactment of new articles of incorporation would have to be passed by the Bar Association and adopted by this Honorable Court subsequent to the effective date of the 1974 Constitution.

7.

That the attempted delegation of authority to enact rules and procedures as to discipline and disbarment of members of the bar by virtue of Article XV of the Articles of Incorporation by this Honorable Court to the Louisiana State Bar Association is an illegal and improper delegation of authority and jurisdiction, and violates the provisions of Article 5, Section 5(B) of the Constitution of 1974; that under this provision of the Constitution, the Supreme Court has the exclusive original jurisdiction of "disciplinary proceedings" and there is no authorization for the delegation of any authority to the Louisiana State Bar Association or any other group or association and such illegal and improper delegation is ultra vires and does violate the rights of respondent under the equal protection and due process clauses of the 5th. and 14th. Amendments of the United States

Constitution and Article 1, Section 2 of the Louisiana State Constitution of 1974 and any other applicable provisions of the said Louisiana Constitution of 1974, all of which are specially pleaded.

8.

Respondent respectfully asks for ten (10) days in which to file a brief in connection with this application.

WHEREFORE, respondent prays that this application for leave to file a Supplemental Application for a rehearing be granted and that a rehearing should be granted in this cause, and that after due proceedings had, that the judgment rendered herein on the 5th. day of March, 1979, should be set aside and reversed, and that after all proceedings and hearings have been had, that there should be judgment herein in favor of respondent, and that the petitions of the Louisiana State Bar Association should be dismissed at its cost.

RESPONDENT FURTHER PRAYS that he be granted ten (10) additional days to file a brief in connection with this motion.

RESPONDENT FURTHER PRAYS for all orders and decrees necessary for full, general and equitable relief in the premises.

Respectfully submitted,

WELLBORN JACK, SR.
Johnson Building, Suite 220
Shreveport, Louisiana 71101

FORD E. STINSON, JR.
P. O. Box 276,
Benton, Louisiana 71006

ATTORNEYS FOR THE RESPONDENT,
By: /s/ Ford E. Stinson, Jr.

APPENDIX F

SUPREME COURT OF LOUISIANA

NUMBER 59855

LOUISIANA STATE BAR ASSOCIATION
Petitioner

VERSUS

FORD E. STINSON
Respondent

Filed May 10, 1977
/s/ Harold A. Moise, Jr., Clerk

PETITION FOR DISCIPLINARY ACTION

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF LOUISIANA:

The Petition of the Louisiana State Bar Association, appearing herein through the Committee on Professional Responsibility represents:

I.

That Ford E. Stinson, hereinafter sometimes referred to as Respondent, is a person of the full age of majority, domiciled and residing in the State of Louisiana, and a member of the Bar of the State of Louisiana.

II.

That the Committee on Professional Responsibility, in accordance with the law, with the rules of the Court, and specifically, with the provisions of Article XV of the Articles of Incorporation of the Louisiana State Bar Association, has conducted an investigation of certain alleged misconduct on the part of Respondent.

III.

That in accordance with said law and rules, the Respondent was given proper notice of the charges against him and afforded an opportunity to defend himself; that, specifically, notices were given to him in a communication addressed to him under date of October 29, 1976, consisting of five (5) specifications.

IV.

That as set forth in the notice of October 29, 1976, a hearing was held on Monday, November 29, 1976, at which Respondent appeared and represented himself as counsel.

V.

That based upon its investigation and the evidence obtained thereby and at the hearing of November 29, 1976, the Committee on Professional Responsibility, by a majority vote, was of the opinion that the Respondent had been guilty of a violation of the laws of this State relating to the professional conduct of lawyers and to the practice of law of sufficient gravity as to evidence a lack of fitness for the practice of law; that, specifically, Respondent was guilty of the misconduct set forth in Specifications No. 1, 2, 3, 4, and 5 of October 29, 1976, under Committee File Number 3817-A, a copy of which specifi-

cations are attached hereto, made a part hereof as if copied in extenso, and marked for identification "EXHIBIT A."

VI.

That Petitioner files herewith the entire transcript of testimony in evidence, both oral and documentary, developed before the Committee at its formal hearing on November 29, 1976.

WHEREFORE, Petitioner prays:

1. That Respondent be ordered to plead or answer within fifteen (15) days from the date of service upon him of a copy of this Petition, and

2. That after issue is joined, the Court appoint a Commissioner to take evidence and, in due course, report to this Honorable Court his findings of fact and conclusion of law, and

3. That ultimately the Respondent, Ford E. Stinson, be disbarred from the practice of law; that his name be stricken from the Roll of Attorneys and his license to practice law in the State of Louisiana be cancelled, or

4. That the Respondent be suspended from the practice of law in the State of Louisiana for a period deemed appropriate by this Court, or

5. That Respondent receive whatever lesser disciplinary action allowed by law and deemed appropriate by this Court, and

6. That if this Court's decision is adverse to Respondent, he be ordered to pay all costs of these proceedings.

LOUISIANA STATE BAR ASSOCIATION

COMMITTEE ON PROFESSIONAL RESPONSIBILITY

/s/ Henry A. Politz, Chairman

/s/ Wood Brown, III

/s/ Sam J. D'Amcio

/s/ Leonard Fuhrer

/s/ Harold J. Lamy

/s/ Edgar H. Lancaster, Jr.

/s/ John F. Pugh

/s/ A. Russell Roberts

/s/ John B. Scofield

LOUISIANA STATE BAR ASSOCIATION
Petitioner

VERSUS

FORD E. STINSON

ORDER

The foregoing Petition considered:

IT IS ORDERED by the Court that Ford E. Stinson, Attorney, plead or answer the within Petition within fifteen (15) days from the date of service of a copy hereof upon him.

New Orleans, Louisiana, this 10th day of May, 1977.

/s/ J. W. Sanders, Chief Justice
Supreme Court of Louisiana

A True Copy — May 11, 1977

/s/ Harold A. Moise, Jr., Clerk

CERTIFICATE

I, the undersigned Counsel for the Petitioner and the Committee on Professional Responsibility, certify that a copy of the foregoing Petition has been mailed to Respondent, Ford E. Stinson, by United States Mail, postage prepaid, this 10th day of May, 1977.

/a/ Melvin G. Dupuis, Jr.
Assistant Counsel

COMMITTEE ON PROFESSIONAL RESPONSIBILITY
LOUISIANA STATE BAR ASSOCIATION

October 29, 1976

Certified Mail Return Receipt Requested

Mr. Ford E. Stinson
Attorney at Law
P. O. Box 276
Benton, Louisiana 71006

RE: FORMAL INVESTIGATORY HEARING
FILE NO. 3817-A

Dear Mr. Stinson:

Under the provisions of Article XV of the Articles of Incorporation of the Louisiana State Bar Association, the Committee on Professional Responsibility hereby notifies you that it has scheduled a formal investigatory hearing of alleged misconduct on your part.

The purposes of this hearing are to determine what evidence exists as to such allegations of misconduct and to ascertain whether disciplinary action should be taken or instituted by the Committee. This Committee's right to independently take disciplinary action based on its findings is limited to the issuance of reprimands. In the event the evidence indicates such misconduct by you as to question your ethical fitness for the practice of law, the Committee may commence proceedings in the Supreme Court of Louisiana requesting that Court to make a final determination of your guilt and to take appropriate disciplinary action which may include disbarment, suspension, or reprimand.

In order to afford you a complete opportunity to prepare and offer a defense, the misconduct alleged is specified as follows:

SPECIFICATION NO. 1—COMMITTEE FILE NO. 3817

In connection with the complaint under the above-numbered file, it has been alleged as follows:

You were retained by parties of interest to file and complete the Succession of Joseph Robert Flannery shortly after his death on November 30, 1969, and did accept this employment. You were then contacted by Mrs. Lloyd C. Ellgass on or about August 25, 1970, for payment of funeral expenses incurred by her for the burial of Joseph Robert Flannery and requesting to be placed in possession of her share of the estate. Despite numerous dmands by Mrs. Ellgass, her attorney, Mr. Clayton E. Preisel, and this Committee, you have intentionally failed, neglected, and refused to complete the Succession of Joseph Robert Flannery, see that the debts were duly paid, and place the heirs thereof in possession of the property.

Your failure to complete this matter, compounded by a long sequence of dilatory tactics and misleading and unfulfilled promises to the complainant, her attorney, and this Committee, is in violation of Disciplinary Rule 7-101 of the Code of Professional Responsibility of this Association.

SPECIFICATION NO. 2—COMMITTEE FILE NO. 4751

In connection with the above-numbered Committee file, it is alleged that:

You were retained by Mr. Henry C. Loftin, Jr., to pursue his claim for damages resulting from an accident he sustained on June 24, 1974. With respect to this representation, you filed suit entitled "Henry C. Loftin, Jr. . . ., vs. William H. Willoughby and the City of Shreveport, Louisiana" bearing Docket Number 230,839 of the 1st Judicial District Court for the Parish of Caddo, Louisiana. The issues were joined and the matter was fixed for trial on the merits on December 11,

1975. Despite the fact that notice of this trial was forwarded to you on November 11, 1975, you neglected to adequately prepare for this trial and failed to subpoena witnesses necessary to prove your client's case in violation of Disciplinary Rule 6-101.

SPECIFICATION NO. 3—COMMITTEE FILE NO. 4751

In connection with the above-numbered Committee file, it is further alleged that:

Mr. Henry C. Loftin, convinced that his case had been substantially prejudiced, accepted the compromise settlement extended by the defendant of $3,785.00 plus the payment of approximately $600.00 in medical bills on December 11, 1975. On that date, a release of claim was executed and a draft in the amount of $3,785.00 was issued to the order of "W. C. Loftin & his attorney Ford Stinson." The said draft was endorsed by Mr. Loftin and you deposited the same in your bank account. Thereafter, you did commingle said funds with your own and convert said $3,785.00 to your own use. On January 5, 1976, you did issue your check number 6614 drawn on your attorney account payable to the order of "Henry C. Loftin, Jr." in the amount of $3,085.00, which check was not honored because there were insufficient funds on deposit in your account. Despite numerous demands upon you by your client, Mr. Loftin, you failed, neglected, and refused to pay to your client the money due him until February 8, 1976, all in violation of Disciplinary Rules 1-102 and 9-102 of the Code of Professional Responsibility of this Association.

SPECIFICATION NO. 4—COMMITTEE FILE NO. 4753

In connection with the above-numbered Committee file, it is alleged that:

During November 1975 you were retained by Mrs. Irma McDowell for the purpose of preventing foreclosure by the Bank of Benton, Louisiana, against certain property standing in the name of her deceased relative, Charlie Smith a/k/a Charlie West, and to handle the Succession of Charlie Smith a/k/a Charlie West. With respect to this representation, you did notify Mrs. McDowell by letter dated December 3, 1975, that the total cost to satisfy the Bank of Benton was $1,167.60. In response to your notice, Mr. Chester McDowell, husband of Irma McDowell, forwarded to you his check number 749 payable to the order of "Ford E. Stinson" in the amount of $1,167.60, dated December 10, 1975. Thereafter, you did commingle said funds with your own and convert the said $1,167.60 to your own use. You did not satisfy the two hand notes to secure the release of the Collateral Mortgage in favor of the Bank of Benton until February 13, 1976, all in violation of Disciplinary Rule 1-102 of the Code of Professional Responsibility of this Association.

SPECIFICATION NO. 5—COMMITTEE FILE NO. 4753

In connection with the above-numbered Committee file, it is further alleged that:

Subsequent to your accepting the employment to render legal services to file and complete the Succession of Charlie Smith a/k/a Charlie West, you have intentionally failed to seek the lawful objectives of your client, Mrs. Irma McDowell. Despite numerous demands of your client and other heirs of the decedant, you have failed, neglected, and refused to complete the Succession and place the heirs into possession of the property in violation of Disciplinary Rule 7-101 of the Code of Professinal Responsibility of this Association.

That the above alleged conduct, if proven, would constitute serious misconduct on your part and would be in violation

of the provisions of the Code of Professional Responsibility of the Louisiana State Bar Association.

You are further advised that you have a right to be represented by legal counsel; you have the right to introduce evidence and to cross-examine witnesses against you; and you have the right to request that witnesses selected by you be subpoenaed and the right to the production of documentary evidence relative to this investigation through the issuance of subpoena duces tecum.

This hearing will be held in Courtroom "A", 2nd Floor, Caddo Parish Courthouse, 500 Texas Street, Shreveport, Louisiana, at 9:00 a.m., Monday, November 29, 1976.

Requests for the issuance of subpoena and subpoena duces tecum must reach the Committee at 101 Supreme Court Building, 301 Loyola Avenue, New Orleans, Louisiana 70112 at least fifteen (15) days before the scheduled date of this hearing. Such requests must contain the names and addresses of such witnesses you desire subpoenaed, and/or a full description of the documentary evidence you desire placed under a subpoena duces tecum.

By direction and authorization of the Committee.

LOUISIANA STATE BAR ASSOCIATION

COMMITTEE ON PROFESSIONAL RESPONSIBILITY

Henry A. Politz, Chairman
Wood Brown, III
Sam J. D'Amico
Leonard Fuhrer
Harold J. Lamy

Edgar H. Lancaster, Jr.
John F. Pugh
A. Russell Roberts
John B. Scofield
Thomas O. Collins, Jr., Counsel
Melvin G. Dupuis, Jr.,
Assistant Counsel

BY:

Melvin G. Dupuis, Jr.
Assistant Counsel

SUPREME COURT OF LOUISIANA

NUMBER 61716

LOUISIANA STATE BAR ASSOCIATION
Petitioner

VERSUS

FORD E. STINSON
Respondent

FILED MARCH 3, 1978

/s/ Harold A. Moise, Jr., Clerk

PETITION FOR DISCIPLINARY ACTION

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF LOUISIANA

The Petition of the Louisiana State Bar Association, appearing herein through the Committee on Professional Responsibility, appearing herein through its Counsel, Thomas O. Collins, Jr., respectfully represents:

I.

That Ford E. Stinson, hereinafter sometimes referred to as Respondent, is a person of the full age of majority, domiciled and residing in the State of Louisiana, and a member of the Bar of the State of Louisiana.

II.

That the Committee on Professional Responsibility, in accordance with the law, with the rules of the Court, and, specifi-

cally, with the provisions of Article XV of the Articles of Incorporation of the Louisiana State Bar Association has conducted an investigation of certain alleged misconduct on the part of Respondent.

III.

That in accordance with said law and rules, the Respondent was given proper notice of the charges against him and afforded an opportunity to defend himself; that, specifically, notices were given to him in communications addressed to him under date of December 7, 1977, consisting of two (2) specifications; and of December 22, 1977, rescheduling date of hearing as per Respondent's request.

IV.

That as set forth in the notices of December 7, 1977, and December 22, 1977, a hearing was held on Wednesday, January 18, 1978, in Shreveport, Louisiana, at which Respondent appeared and represented himself as counsel.

V.

That based upon its investigation and the evidence obtained thereby and at the hearing of January 18, 1978, the Committee on Professional Responsibility, by a majority vote, was of the opinion that the Respondent had been guilty of a violation of the laws of this State relating to the professional conduct of lawyers and to the practice of law of sufficient gravity as to evidence a lack of fitness for the practice of law; that, specifically, Respondent was guilty of the misconduct set forth in Specifications No. 1 and 2 of December 7, 1977, under Committee File Number 5459-A, copies of which specification and notice of December 22, 1977, are attached hereto, made a part hereof as if copied in extenso, and marked for identification "EXHIBIT A" and "EXHIBIT B", respectively.

VI.

That Petitioner files herewith the entire transcript of testimony in evidence, both oral and documentary, developed before the Committee at its formal hearing on January 18, 1978.

WHEREFORE, Petitioner prays:

1. That Respondent be ordered to plead or answer within fifteen (15) days from the date of service upon him of a copy of this Petition; and

2. That after issue is joined, the Court appoint a Commissioner to take evidence and, in due course, report to this Honorable Court his findings of fact and conclusions of law, and

3. That ultimately the Respondent, Ford E. Stinson, be disbarred from the practice of law; that his name be stricken from the Roll of Attorneys, and his license to practice law in the State of Louisiana be cancelled, or

4. That the Respondent be suspended from the practice of law in the State of Louisiana for a period deemed appropriate by this Court, or

5. That Respondent receive whatever lesser disciplinary action allowed by law and deemed appropriate by this Court, and

6. That if this Court's decision is adverse to Respondent, he be ordered to pay all costs of these proceedings.

LOUISIANA STATE BAR ASSOCIATION

COMMITTEE ON PROFESSIONAL RESPONSIBILITY

/s/ John B. Scofield, Chairman
/s/ Wood Brown, III
/s/ Sam J. D'Amico
/s/ Leonard Fuhrer
/s/ Harold J. Lamy
/s/ Edgar H. Lancaster, Jr.
/s/ Henry A. Politz
/s/ John F. Pugh
/s/ A. Russell Roberts

SUPREME COURT OF LOUISIANA

LOUISIANA STATE BAR ASSOCIATION
Petitioner

VERSUS

FORD E. STINSON
Respondent

ORDER

The foregoing Petition considered:

IT IS ORDERED by the Court that FORD E. STINSON, Attorney, plead or answer the within Petition within fifteen (15) days from the date of service of a copy hereof upon him.

New Orleans, Louisiana, this ____ day of_____, 1978.

_____
CHIEF JUSTICE

Please Serve:

Mr. Ford E. Stinson
P. O. Box 276
Benton, Louisiana 71006

CERTIFICATE

I, the undersigned Counsel for the Petitioner and the Committee on Professional Responsibility, certify that a copy of the foregoing Petition has been mailed to Respondent, Ford E. Stinson, by United States Mail, Postage Prepaid, this third day of March, 1978.

THOMAS O. COLLINS, JR.

December 7, 1977

Mr. Ford E. Stinson
Attorney at Law
Post Office Box 276
Benton, Louisiana 71006

RE: FILE NO. 5459-A
FORMAL INVESTIGATORY HEARING

Dear Mr. Stinson:

Under the provisions of Article XV of the Articles of Incorporation of the Louisiana State Bar Association, the Committee on Professional Responsibility hereby notifies you that it has scheduled a formal investigatory hearing of alleged misconduct on your part.

The purposes of this hearing are to determine what evidence exists as to such allegations of misconduct and to ascertain whether disciplinary action should be taken or instituted by the Committee. This Committee's right to independently take disciplinary action based on its findings is limited to the issuance of reprimands. In the event the evidence indicates such misconduct by you as to question your ethical fitness for the practice of law, the Committee may commence proceedings in the Supreme Court of Louisiana requesting that Court to make a final determination of your guilt and to take appropriate disciplinary action which may include disbarment, suspension, or reprimand.

In order to afford you a complete opportunity to prepare and offer a defense, the misconduct alleged is specified as follows:

SPECIFICATION NO. 1—COMMITTEE FILE NO. 5459

In connection with the above-numbered Committee file, it is alleged that:

You accepted the presentation of Mr. and Mrs. Jay M. Fuller and Terri L. Colley (daughter of Mrs. Fuller) in their claim for damages arising out of an auto accident occurring on December 25, 1975, in which Miss Colley was injured. Eventually, the claims against the several defendants were settled and on February 22, 1977, a Receipt and Release for $28,000.00 was executed. Of this sum, $2,000 in medical payments had previously been paid directly to the clients. The remaining $26,000.00 was delivered to you as follows:

(A) Draft of State Farm Mutual Automobile Insurance Company for $6,000 dated February 14, 1977, and negotiated by you February 15, 1977;

(B) Draft of Reliance Insurance Companies for $10,000.00 dated February 17, 1977 and negotiated by you February 23, 1977;

(C) Draft of MFA Mutual Insurance Company for $10,000.00 dated February 18, 1977 and negotiated by you February 23, 1977.

These funds were commingled with your own and thereafter all or a very substantial portion were converted to your own use, all in violation of DR 1-102 and DR 9-102 of the Code of Professional Responsibility.

SPECIFICATION NO. 2—COMMITTEE FILE NO. 5459

In connection with the above-numbered Committee file, it is further alleged that:

Subsequent to receipt of the funds belonging to your clients, Mr. and Mrs. Jay M. Fuller and Terri L. Colley set

forth in the foregoing specification, you made repeated misrepresentations to your clients as to the reason the funds were not being delivered to them and you failed and refused to make appropriate accounting and timely delivery. Funds received in February 1977 were not accounted for and distributed until a payment of $5,000.00 on July 29, 1977, and a payment of $15,862.50 on August 11, 1977, which payments were made only after your clients directly challenged the veracity of earlier representations made by you. All of this conduct is in violation of DR-102 and DR 9-102(B) of the Code of Professional Responsibility.

That the above alleged conduct, if proven, would constitute serious misconduct on your part and would be in violation of the provisions of the Code of Professional Responsibility of the Louisiana State Bar Association.

You are further advised that you have a right to be represented by legal counsel; you have the right to introduce evidence and to cross-examine witnesses against you; and you have the right to request that witnesses selected by you be subpoenaed and the right to the production of documentary evidence relative to this investigation through the issuance of subpoena duces tecum.

This hearing will be held in the courtroom of the Courthouse of the First Judicial District Court, Shreveport, Louisiana, at 10:00 A.M., Monday, January 9, 1978.

Requests for the issuance of subpoena and subpoena duces tecum must reach the Committee at Suite 210, 225 Baronne Street, New Orleans, Louisiana 70112 at least fifteen (15) days before the scheduled date of this hearing. Such requests must contain the names and addresses of such witnesses you desire placed under a subpoena duces tecum.

By direction and authorization of the Committee.

LOUISIANA STATE BAR ASSOCIATION

COMMITTEE ON PROFESSIONAL RESPONSIBILITY

John B. Scofield, Chairman
Wood Brown III
Sam J. D'Amico
Lonard Fuhrer
Harold J. Lamy
Edgar H. Lancaster, Jr.
Henry A. Politz
John F. Pugh
A. Russell Roberts
Thomas O. Collins, Jr.,
Executive Counsel

BY:

Thomas O. Collins, Jr.,
Executive Counsel

December 22, 1977

Mr. Ford E. Stinson
Attorney at Law
P. O. Box 276
Benton, Louisiana 71006

Certified Mail Return Receipt Requested

RE: FILE NO. 5459-A
FORMAL INVESTIGATORY HEARING

Dear Mr. Stinson:

In view of the fact of your involvement in serious litigation on Monday, January 9, 1978, and as per your request, the hearing has been postponed from that date and has been rescheduled for Wednesday, January 18, 1978, at 10:00 a.m. This will be your official notice of the new date and in all other respects the provisions of the specifications of December 7, 1977, remain in full force and effect.

Yours very truly,

Thomas O. Collins, Jr.
Executive Counsel